THE LAND DEPARTMENT AS AN ADMINISTRATIVE TRIBUNAL[1]

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INTRODUCTION

If, for the moment, we can conceive of Uncle Sam as being Andrew Carnegie, of Carnegie's millions as unimproved real estate, and of Carnegie's intention to die poor, as Uncle Sam's liberal land policy, we can perhaps best picture to ourselves the public land administration in the United States in a nutshell. The government, like Carnegie, is unloading its vast wealth in a manner calculated to do the most good, and it is guarding itself continuously, although often futilely, from being imposed upon and cheated. The ownership of the public domain by the United States is of the highest possible title. There is no one to dispute the government's absolute ownership of it. There are no taxes to pay. The government is subject to no obligation to dispose of its land. It can keep or dispose of the land as it chooses.

In 1789 the United States government started as owner of practically all of the Northwest Territory. Later it acquired, what some geographers call the Southwest Territory, by further cession from the States. By purchase, discovery, annexation and conquest the United States acquired further holdings, so that with the exception of Texas and private holdings the government's fee simple title in the public domain extended from the thirteen colonies to the Gulf of Mexico, and from the Atlantic Ocean on the east coast of Florida to the Pacific and the Arctic Oceans. This domain is perhaps the greatest single holding of

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fee simple, undisputed title to real estate vested in any government that ever existed, except the Russian holdings.

The present policy of the government did not originally prevail. Originally the United States treated the public lands as the source of revenue, and treated the persons that settled upon the public lands as intruders and trespassers. After years of debate in congress, culminating in the leadership of Foote upon the one hand and Benton upon the other hand, the views of Benton prevailed and the United States began to dispose of its public lands for a purely nominal consideration, giving the preference to actual settlers. This was the beginning of the "preemption laws," which in 1891 became merged into the free homes act and became the modern homestead act.

During the middle decades of the nineteenth century the States were bonding themselves and voting large subsidies of money to private corporations for the construction of railroads, toll roads, canals, and for internal development. Some southern States are still laboring and struggling to pay the interest on these bonds. The middle west States asked for and received large donations of public lands for the purpose of turning the lands over to private corporations for internal improvements. Congress itself, also, gave land and financial aid direct to private corporations for internal improvements. The land grant to the Northern Pacific Railroad Company alone was of a "a territory nearly equal in extent to that of Ohio and New York combined;" Barden vs. Northern Pacific Railroad Company (154 U. S., 313 at 317).

We must also consider the homestead, the timber and stone, the desert land, the mineral land, the timber culture, the Oregon donation, and numerous other laws giving land to private individuals, usually in smaller quantities.

In addition to this the States received two sections, and later four sections, *out of every township* for the support of the common schools, and large grants of land in addition for agricultural colleges and other purposes. The States were also given the swamp and overflowed lands. Under rulings and statutes the States were also held to have title to the land beneath navigable bodies of

water upon the public land, and to have full control over the water in the streams, whether navigable or non-navigable, except for the purposes of navigation.

THE EFFECT OF LAND FRAUDS

Were it possible to conceive that all of the persons, the corporations, the States, the officials of the States, and the transferees of the States, are acting in entire good faith toward the United States government because of its liberal land policy, and that all of these beneficiaries of this liberality reported accurately and truthfully in the required and necessary affidavits and proofs, there would probably be no public land tribunal as it now exists. In other words, the disposal of the public lands would be accomplished through officials and inspectors without the intermediary of hearings and arguments.

The term "land fraud" has become as historic as the term "carpet-bagger," "nullification," and "mugwump." From the earliest times frauds crept in, even when the lands were sold at auction to the highest bidder to raise revenue for the running expenses of the government. Severe statutory penalties were put in force against conspiracies to prevent fair competition in bidding for public land. The land frauds have been great and small, they have been organized and unorganized and isolated, they have varied from petty larceny by false proof of the individual claimant to the colossal grab of the well organized conspiracy of great corporations. The mere fact that the statutes gave vast empires, of necessity meant that certain persons were to receive great fortunes in public lands, while the homestead, the desert land, the timber culture, and the preëmption laws meant independence to large numbers. However, the very liberality of the laws, and liberality of intention, stimulated a widespread spirit of greed that has permanently blemished names that would otherwise have lived in this country, honored for constructive service, usefulness and philanthropy.

How does fraud influence jurisprudence? It is said that the notorious Ex-Judge Terry of California in reality established

California jurisprudence, and that his notorious crookedness and tricky legal arguments were more than effective in keeping the California supreme court up to the highest pitch of efficiency.

The land department has had not one but hundreds and thousands of crooked Terrys to deal with during the past century.

If this government had had no public domain in the past, and had suddenly become vested with a large area of lands, with numerous and complicated laws to enforce, the bare administration of the laws would be an almost impossible task, while the guarding of the public domain from fraud would present an almost insurmountable obstacle, without blockading the allowance of any patents.

The land frauds, however, had caused the appointment of skilled inspectors, called "special agents;" have caused the enactment of laws making it perjury to swear falsely to necessary documents; the enactment of legislation requiring the presence of witnesses at hearings; the formulating of procedure for trials and hearings, so that the informer and his witnesses and the claimant and his witnesses may confront each other and give their testimony; and created a body of judicial decisions that are respected by all of the courts of the United States as precedents; and were it not for the fact that persons sought to abuse the high privileges granted by the government, the laws making it perjury to swear falsely to material papers, the laws requiring the presence of witnesses, the vast appropriations for inspectors or special agents, and the vast expense of hearings and contests would not be necessary.

THE OBJECT OF PUBLIC LAND LITIGATION

It may be said that every tribunal aims toward certain objects. The tribunal of the department has three objects. First, to ascertain whether the State, corporation or individual has complied with the law under which the claim is made, and to issue patent if found that the claimant has complied with the law. Second, to investigate and ascertain whether the State, corporation or person has failed to comply with the law under which the

particular land is claimed, and to cancel or reject the particular entry, application or proffer, in order to prevent the claimant from securing the patent. Third, to ascertain whether the information given to the department by an informer is sufficient to cancel or reject an application or section for certain land, and, if sufficient, to reward the informer by giving him a preference right to make application or entry upon the same land.

THE INTERIOR DEPARTMENT'S RELATION TO OTHER TRIBUNALS

By article 4, section 3, of the Constitution the power of disposing of and making rules regulating this domain was vested in congress. By Revised Statutes, section 441, 453, 454, 455, 456 and 458, congress placed general authority in the secretary of the interior and the commissioner of the general land office. Congress by innumerable acts, special and general, has enacted legislation vesting the control over the public domain in the interior department, an offshoot of the old treasury department which formerly had jurisdiction.

The supreme court, the federal courts, and the State courts have rendered innumerable decisions as to the exclusive power of the interior department over the public domain prior to the issuance of patent. The jurisdiction of the interior department *as a court* begins the moment some one seeks under an Act of congress to acquire title to the land by filing an application therefor, and the jurisdiction of the department terminates when patent is issued; United States vs. Schurz (102 U. S., 378).

It must be remembered that this discussion has nothing whatever to do with the secretary of the interior as an administrator of the public domain, but only with the interior department as a tribunal. Perhaps the most concise statement, as well as the most accurate, of the department as a tribunal, is found in the case of James vs. Germania Iron Company (107 Fed., 597 at 600):

"The land department of the United States is a quasi judicial tribunal, invested with authority to hear and determine claims to the public lands subject to its disposition, and its de-

cisions of the issues presented at such hearings are impervious to collateral attack, and presumptively right."

The supreme court has constantly held that the decisions of the interior department are those of a court and are of a judicial character, even in the approval of an *ex parte* case; Daniels vs. Wagner (237 U. S., 547); Burke vs. Southern Pacific (234 U. S., 669); Weyerhauser vs. Hoyt (219 U. S., 380); and Wisconsin Central Railroad Company vs. Price County (133 U. S., 496). These decisions could be multiplied many times.

The supreme court has also often held, not only that the interior department is a court, and that its decisions when rendered are judgments of great force and effect, not being subject to collateral attack, but the supreme court has also held that while the matter is pending before the department the courts cannot interfere by injunction, mandamus, or other process to prevent the secretary of the interior from arriving at his judgment, and from rendering his decision in a proper case; Ness vs. Fisher (223 U. S., 683). This shows that the secretary of the interior *is vested with an independence from other tribunals* so that in the adjudication of cases he is entirely free from interference or control.

Not only this, but the supreme court has held that in the execution of a law that does not fully prescribe the method by which the lands are thrown open to application and entry, the secretary of the interior is vested with full authority to prescribe regulations by which the provisions of the law can be taken advantage of; Roughton vs. Knight (219 U. S., 537).

Having seen that the secretary of the interior is vested with full judicial authority, it only remains to give a word regarding the decisions of the department. In the cases of Bishop of Nesqually vs. Gibbons (158 U. S., 155), and Northern Pacific vs. Soderberg (168 U. S., 526), the decisions of the interior department were held to be of a high order as precedents, not conclusive upon the courts but more than ordinarily persuasive.

In the case of Louisiana vs. Garfield (211 U. S., 70), the supreme court held that where the interior department had uniformly construed the law in a certain manner, which had been acquiesced in for years, the courts would not construe the law

otherwise, even though upon a matter of original construction it would disagree with the construction placed upon the law by the interior department, for fear that in so doing it would upset property rights to an alarming degree.

Having seen that the administration of the public lands has been vested in a *quasi* judicial tribunal, the question now is whether the judicial system, which the interior department has adopted, is one which stands the test of a legal tribunal. The question whether it is necessary that a tribunal follow a certain prescribed form under the guarantees of the United States constitution, was discussed by the supreme court of the United States in the case of Kenard vs. Louisiana (92 U. S., 480). The supreme court there laid down the rule that a person is not deprived of his constitutional guarantees, where there is ample provision for a trial before a court having jurisdiction over the subject matter, with a process for bringing the case, and for bringing the parties before the court for trial, with an opportunity given to present both sides; a deliberation upon the law and facts as presented; a judgment by a court; and ample opportunity for either party to appeal from the judgment of the court to the highest court of the State. There must, therefore, be shown to be, before the interior department process for giving a party a chance to present his case against another party, and for giving the party attacked the right to present his defense, a deliberation and decision upon all of the facts, and a privilege of appeal and review.

In the case of Peyton vs. Desmond (129 Fed., 1), Justice Van Derventer, while a justice of the circuit court of appeals, stated that the interior department was required to give a party an opportunity to be heard in his own defense before rendering a judgment against him.

Having seen what is generally required of a tribunal under our system of government, and having seen that the interior department is a court, we might now inquire as to the limitations of its authority before proceeding to a further discussion of its system of administering justice. In the first place, in the cases of Daniels vs. Wagner (237 U. S., 547); Burke vs. Southern Pacific (234 U. S., 669); Ness vs. Fisher (232 U. S., 683), and in other cases,

the supreme court says that the secretary of the interior in the exercise of his judicial functions cannot act arbitrarily, capriciously or in disregard of the limitations imposed upon him by law.

It is a general principle that after patent the jurisdiction of the interior department ends, and, if a person has been wrongfully or illegally deprived of his right to public land by the interior department, which awarded a patent to another, the party so deprived may bring an action in equity to have the patentee held as a trustee; Duluth Railroad Company vs. Roy (173 U. S., 587); Ard vs. Brandon (156 U. S., 537); Daniels vs. Wagner (237 U. S., 547).

Its relations, therefore, to other tribunals is one of absolute independence.

THE ADJUDICATING OFFICIALS

The control over the public lands, vested in the interior department, is the result of statutes enacted by congress and by a century old practice. We have referred to the statutes vesting general authority in the secretary of the interior and the commissioner of the general land office. Registers and receivers are provided for by Sections 2234 to 2247 of the Revised Statutes. The registers and receivers, while subordinates to the commissioner of the general land office, have powers and duties prescribed by law, and receive their appointment from the president of the United States, which appointments are confirmed by the senate.

For all practical purposes it may be stated that every action relating to public land, except directions to them, originates in the office of the register and receiver. They are in charge of a district land office, usually composed of several counties of a State in which there are open, public lands. They are in full charge of their records and tract books. Every attempt to acquire public lands takes the form of an application and is originally filed in the office of the register and receiver. Every adverse proceeding, of whatsoever nature, is initiated by the service of notice by the register and receiver. Every proceeding that takes the form of a hearing is either tried before the register and receiver, or before commissions issued by them to other officials.

The register and receiver mainly are required to carry out with exactness the orders issued to them by the commissioner of the general land office, in accordance with either general or specific circulars of instructions. They have a certain amount of discretion in some matters, and their actions in such instances bind the government. In the main, however, the action of the register and receiver is originally controlled by the commissioner of the general land office. Every action is reviewed, whether coming before the commissioner upon appeal or not.

The commissioner of the general land office is an official appointed by the President of the United States. He is actually in charge of the administration of the public lands. His action in practically all matters binds the government. Although a right of appeal to the secretary exists from the decision of the commissioner of the general land office in many instances, and although lists of indemnity lands by railroads and States require the signature and approval of the secretary of the interior, before the commissioner can issue the patent, in the vast bulk of the cases the commissioner's action and decision are final.

The general land office is divided into divisions, with several clerks and a chief in charge. Between the division and the commissioner is the board of law review. Usually in a private corporation the work that comes before the clerk is of a highly routine character, and the more responsible work is carried on by a very few highly paid specialists. The land office work is entirely different. Upon the clerks in the divisions of the land office the vast burden of the original adjudication of cases falls. Each commissioner's opinion is prepared by a clerk, except in extraordinary cases. Each clerk, therefore, for all practical purposes, renders the decisions adjudicating property rights that may amount to thousands of dollars. The work placed upon the clerk is as responsible as that placed upon the shoulders of a county judge.

The clerk originally examines either *ex parte* or controverted cases under the direction of the division chief, who assigns the cases and may overrule the clerk. The clerk must give the work before him a high quality of skill and legal ability. While he is

governed by the various circulars and decisions affecting his work, the burden is upon him to make up a statement of the facts, which are seldom changed, and he is not limited by the published decisions of the department.

It may happen that a clerk of one division and a clerk of another division may have precisely the same legal question before him, and each after research may arrive at an entirely different conclusion. It would be utterly impossible to expect the commissioner of the general land office to bear in mind the numerous rulings, but this is the function of the law board. The law board forms the legal clearing house of the general land office. It may be consulted preliminary to preparing decisions, and it also reviews decisions after they are prepared. The commissioner of the general land office takes no action that cannot be recalled or reversed by the secretary of the interior, except the issuance of patent.

The secretary of the interior is the executive head of the interior department. He is also the supreme court of land appeals. The secretary, however, does not, except in a few selected cases involving matters of great public policy, attempt actually to adjudicate appeals himself. This is usually committed by him to an official known as the first assistant secretary of the interior. Under the first assistant secretary is the solicitor of the department, the board of appeals of the interior department, the first assistant attorney and a large number of assistant attorneys. Before the secretary come the appeals in land cases from the commissioner of the general land office. It may be said that practically every controverted case, except decisions by the commissioner of the general land office against the government in a government contest, comes before the secretary of the interior upon appeal.

THE APPLICATION

It may be said that the adjudicating officials of the department of the interior acquire their jurisdiction by the filing of an application in the local land office by a claimant before the local land office. Until an application is so filed the purpose of a

claimant to acquire public land is unexpressed. "The Department can know nothing of it;" W. E. Moses Land Scrip and Realty Company (34 L. D., 458).

The one purely *ex parte* action before the land department is the application. An application may be variously known as a selection, a sworn statement, a declaration, or a proffer.

The application, therefore, is the initiatory act on the part of the claimant that gives the *judicial authority* of the department its jurisdiction; Weyerhaeuser vs. Hoyt (219 U. S., 380 at 387).

The second step in an application proceedings is on the part of the land officials, allowing or rejecting the application. The act of accepting the application, which may be termed to be the acquiescence or consent of the land department on the part of the United States, is judicial. It is then that a contract is entered into between the United States and the applicant, *but not before.* Then the application becomes an entry.

Entries are either interlocutory or final. A homesteader or a claimant under the desert land law receives an interlocutory entry which entitles him, not to a patent, but to possession of the land, with the privilege of beginning or continuing his compliance until he makes full compliance. Then he makes proof, which upon acceptance becomes a *final* entry. Applications to purchase of all sorts, or proffers to exchange, or selections, or sworn statements, are not usually applications for interlocutory entry. They are usually applications for an immediate, final entry, and upon allowance become final entry.

The register and receiver are authorized to accept interlocutory entries, final entries in homesteads, desert land, and applications under similar laws.

The commissioner of the general land office allows ordinary scrip applications. The secretary alone is authorized to allow indemnity selections of States and railroads; Wisconsin Central Railroad Company vs. Price County (133 U. S., 496). Although where the statute is silent the secretary may place the jurisdiction in the commissioner to approve a selection; Cosmos Company vs. Grey Eagle Company (190 U. S., 310).

The allowance of a final entry means the entryman is entitled

to a patent. He is then the equitable owner of the land and entitled to exclusive possession thereof; Bothwell vs. Bingham County (237 U. S., 642). The States and the courts treat the final entryman as the real owner of the land. He is subject to many forms of legal process. The land is subject to barter and sale. It is subject to state taxation. The title, however, actually remains in the United States and the land and the entry is within the jurisdiction of the interior department until patent issues: Hussman vs. Durham (165 U. S., 144); Sargent vs. Herrick (221 U. S., 404).

EX PARTE PROCEEDINGS

The prosecution of an application to the issuance of a patent, or until it is rejected, may be wholly *ex parte*. The rejection of an application, or cancellation of an entry, for lack of compliance with the law may take place. Mere failure to comply with the law involves no moral taint.

An order holding an entry for cancellation is always appealable. Usually the defect is clearly pointed out in the order and a limited time is allowed within which to correct the defect if curable.

If it is determined to cancel the entry upon a dispute as to the proofs filed, the proceedings are called adverse proceedings.

ADVERSE PROCEEDINGS

The object of adverse proceedings is to secure the rejection of an application or the cancellation of an entry; that is, to prevent the issuance of a patent.

We have considered, heretofore, the case of where an individual, a corporation, or a State, *makes application* for lands under an act of congress. In these proceedings, which are purely *ex parte*, it is a matter solely between the United States and the applicant, with the interior department as the court to determine whether the law has been complied with.

The great abuse of the land system is the bad faith of individuals and corporations toward the United States and toward

other and adverse claimants. This consists mainly in the filing of false affidavits and false proofs, amounting in some instances to criminal perjury, and in other instances not amounting to perjury because the particular document sworn to falsely was not specifically mentioned in the statute. If the proofs and affidavits filed by persons and corporations with respect to their claims were approximately true, there would be no need of any particular elaborate system of jurisprudence because the department would be enabled by an examination of the proofs and affidavits filed, and by an inspection on the ground in case of conflict, to determine in each and every instance the priority of rights.

Unfortunately, however, this is not possible. From the earliest times there has been brought to the attention of the land officials complaints that the proofs, affidavits, and the like, were not true. How these were dealt with in the early days is of no interest here. Certain of the old decisions show actions thereon, that now would be regarded as highly arbitrary. It is not possible now to cancel an entry or reject an application without full opportunity being given to the entryman or applicant to be heard on his own behalf; Peyton vs. Desmond (129 Fed., 1).

The best known of these adverse proceedings is the contest.

THE CONTEST

The contest is a statutory right that was given by act of congress, May 14, 1880 (21 Stat., 140, Sec. 2), and extended by other acts, notably the act of March 3, 1891 (26 Stat., 1095, Sec. 2). A contest is identical with an ordinary law suit, except that in a contest, if the entry or application is canceled, the contestant or informer receives the right to make entry *as a reward for securing the cancellation of the entry.* In an ordinary action at law, where one party sues the other party for premises, if the plaintiff is successful, the judgment is that he and not the defendant is entitled to the possession or title of the premises. In a contest the entry or right to the land is canceled or rejected, and the contestant is given thirty days preference right within which to enter the land himself. Probably in no other system of jurisprudence

is a mere informer given such a high privilege, or dignified to such a high degree.

A contestant is required to pay all of the expenses of securing the cancellation of an entry, except the expenses of the entryman or defendant in introducing his own testimony by his own witnesses.

The contest originates by a pleading, called the contest affidavit, which is sworn to by a private individual known as the contestant or informer, alleging in general language the facts that constitute the alleged lack of compliance, the alleged illegality or fraud on the part of the entryman or applicant, verified by the affidavits of two persons. This may be denied by the defendant under oath. If not denied the contestant wins his case by default. If denied, a hearing is ordered in which the testimony may be taken before the register and receiver, or in the county where each witness resides by deposition under the state laws governing the taking of depositions. The evidence taken is considered and a preliminary decision is recommended by the register and receiver to the commissioner. This decision of the register and receiver has about the same weight as the recommendation to the court of a master in chancery.

There is a right of appeal to the commissioner of the general land office, but even in the absence of an appeal the commissioner of the land office may make an appropriate decision either affirming or reversing the decision of the register and receiver. Usually, however, in case of a default the commissioner affirms the decision of the register and receiver. If, however, there is no appeal from the register and receiver to the commissioner, the commissioner's reviewing decision is final and there is no right of appeal to the secretary of the interior by the defeated party.

Otherwise the decision of the commissioner is subject also to an appeal to the secretary. Either party, disappointed in the decision of the secretary of the interior, has a right to file a motion for rehearing. Upon final decision upon motion for rehearing the defeated party has the right to file a petition for the exercise of supervisory authority. The practice varied from time to time as to whether these motions for rehearing had to be

served upon the opposite party. At the present time the motions need not be served, thus departing from the present tendency of the federal courts. If a motion or petition is entertained by the secretary it must thereafter, within the time specified, be served upon the opposite party who is required to make answer thereto.

THE PROTEST

The protest is the older of the adverse proceedings, and goes back to the time when land practice was more or less informal.

Up to 1910 a protest may have been one of four kinds:

First, a contest could become a protest at any time by the contestant defaulting or refusing to advance the costs. Thereupon the case would proceed to a conclusion and, if the entry was cancelled, no preference right was awarded.

Second, an informer could allege against an entryman, or his entry, under oath and verified by the affidavits of two witnesses, facts sufficient to cause the cancellation of the entry, *without claiming a reward or preference right for his action.* He could assume the entire expense of the proceeding merely because of public spiritedness or otherwise. Such actions, however, are extremely rare, although there is nothing to prevent such an action taking place. At the present time, since 1910, all informers who do not desire to claim a right to enter the land as a reward, or do not allege an interest in the land, adverse to the entryman, can only be a witness, for any such complaint is now forwarded to an official, called the chief of field division, of whom we will speak directly.

Third, a protest may be initiated by those persons who claim an interest, adverse to the defendant, in the same land. A person may file a homestead application upon certain land, and another may locate the same land as a mining claim. He then protests the homestead entry and files a proper complaint which alleges that the land, as a matter of fact, is mineral in character. The protestant thus claiming an adverse interest in the land must also pay the expenses of the proceedings. Such a protest, with the exception of the award of a preference right, is in every re-

spect similar to a contest. It is also similar to the first form of a protest, which we have mentioned, except that the party intends to benefit by the protest proceedings, while in the first sort the party does not intend to benefit.

Fourth, the next proceeding has been called a government protest, or often a government contest, although no one is awarded a preference right. The interior department maintains a trained corps of inspectors, known as special agents. These officials have been maintained by the department for a number of years. It was found necessary to have a trained corps of men investigate the various entries on behalf of the United States in order to determine whether fraud exists, or whether the land is of the character alleged by the applicant who seeks to secure a patent. These inspectors perform services very similar to detectives, although perhaps with considerably more openness, for the reason that their presence being known, acts as a deterrent.

The public land States of the United States are divided up into districts, and in each district there is usually at the principal city an official known as the chief of the field division, who has charge of all the special agents in his district. Public spirited persons, and others who feel that certain entrymen, or applicants, or corporations, are not complying with the law, or have or are committing fraud, write letters to various officials, from the president of the United States, the secretary of the interior, down to the commissioner of the general land office. All complaints, from whatever source, by voluntary complainants who do not desire to make entry of the lands, are investigated by special agents, who also investigate matters that come under their own observation, or are otherwise brought to their notice, or are required to be investigated by orders of superiors. The special agent makes a report upon the claim, which forms the basis of further proceedings by the government. This report is transmitted to the commissioner of the general land office, in whose office it is reviewed, and, if found sufficient to warrant proceedings, adverse proceedings are directed under the signature of the commissioner. Thereafter the proceedings are similar to those of the other protest or contest, as the government is the complainant and pays the costs of the suit.

DOES THE INTERIOR DEPARTMENT TRIBUNAL DO JUSTICE?

Let us consider how the effect of departmental litigation may be tested.

(a) Appeals: It is sometimes said that the right of appeal is often useless in administrative tribunals because the whole object of the officer appealed to is to affirm the one appealed from. This can not be considered a valid criticism of either the commissioner upon his consideration of appeals from the local land office, or the secretary upon his consideration of appeals from the commissioner. In both cases the proportion of reversals encourage the litigant, who feels that the prior decision does him an injustice, to appeal from the lower tribunal to the higher tribunal.

(b) Expense: Is the cost of litigation in the interior department expensive? When we consider that an applicant secures his land at a low rate, when we consider that the fees of the local officers are light in the individual cases, there are no costs in the ordinary sense of the term, except purely nominal costs for proceedings from the office of the register and receiver through to the secretary of the interior, and there is no requirement for the printing of briefs or arguments on appeal, we doubt if there can be found any tribunal in the world where the actual cost of litigation is so cheap as litigation before the interior department.

(c) Do the cases stand the test of scrutiny? The supreme court has in numerous cases recognized the right of any person, deprived of his right before the interior department, to institute a suit in the courts to have the subsequent patentee compelled to hold his patent in trust for the prior claimant. It is true that in numerous instances the patents issued after litigation in the interior department have been held wrongfully awarded. However, from the hundreds of patents issued each month for the past hundred years, the fact that there has been no successful legislation limiting the authority of the interior department, or giving a right to appeal to the courts, and the fact that the cases where courts have denied applications to hold patentees as trustees are innumerable as compared to cases where such actions have been

allowed, appears to be the best answer that can be given to this criticism of the department. It is entirely true that the department has from time to time rendered erroneous decisions that have not stood the test of court constructions, but these instances are by no means general.

(d) Can the department stand the test of changes? The department has stood tests that ordinary courts might fear being subjected to. In 1891, numerous ordinary laws were repealed and new laws were enacted. In fact, nearly the whole body of the land law was recodified. Numerous changes of the homestead laws, the desert land laws, the mineral land laws, and the like, have been made practically without warning, and prompt notice thereof has been issued publicly, and the changed enforcement has been rapidly administered. The tremendous land frauds, unearthed in Oregon, implicating prominent men in business, social and political life, instead of breaking down the department's tribunal, were met and handled effectively. The change that grew up, known as the "Conservation Movement," was met and made a part of the public land system practically without an additional statute, except the act of June 25, 1910 (36 Stat., 847), which was held by the supreme court of the United States, in the Midwest Oil Company's case (236 U. S., 459), to have been an unnecessary change.

(e) Are its rulings respected? The opinions rendered by the department from time to time have had the respect of the courts generally; Northern Pacific vs. Soderberg (188 U. S., 526). The interior department, on the other hand, for years declined to follow the federal courts and the supreme court in principles, such as were announced in the case of Sjoli vs. Dreschel (199 U. S., 565). The supreme court of the United States finally in the case of Weyerhaeuser vs. Hoyt (219 U. S., 380), very gracefully followed the rulings and practice of the interior department, and characterized its own previous opinions upon the same subject as *dicta*.

(f) Permanence: The interior department as a tribunal stands high. It is the belief of the writer that as long as there are public lands, there will be no change in the jurisdiction of the land

department. I firmly believe that the interior department stands out, not only as the best justification for its own continuance as an administrative tribunal, but also that having weathered the greatest of difficulties during its tempestuous history, it would be a profound error now to create a new tribunal.